

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF MISSOURI

Joshua R. Gilley
Petitioner

v.

Case No. _____

Anne L. Precythe,
Tim A. Freeman,
Eric Schmitt,
Respondent

PETITION FOR A WRIT OF
HABEAS CORPUS UNDER,
28 U.S.C. § 2241

Comes Now The Petitioner, Joshua R Gilley, and files this petition for Writ of Habeas Corpus By a person in state custody pursuant to 28 U.S.C. Section 2241, and in support thereof would respectfully show unto the Court the following:

1. Joshua R Gilley, the Petitioner, here in known as the Petitioner for all intents and purposes, is currently serving (2) two Concurrent Sentences in the State of Missouri Department of Corrections.

2. His current confinement is Bonne Terre, Missouri, At the Eastern Reception Diagnostic Correctional Complex, located at 2727 Highway K Bonne Terre, Missouri 63628

3. The Petitioner's Original Sentence is a Class(B) Felony, for Second Degree Assault - Special Victim. It is an (8) eight year Sentence, with a mandatory 85% to be served before Parole is available. This Sentence is imposed by Greene County Missouri with a Start Date of December, 12, 2017 and a Maximum release Date of December 11, 2025.

4. The Petitioner's Concurrently Serving a Sentence for a Class (E) Felony for a Third Degree Assault. This is a (4) four year Sentence with a mandatory 40% to be served before Parole is available. This Sentence is imposed By Pike County Missouri with a start Date of November, 21, 2022 and a Maximum release Date of November, 20, 2026

5. The Judge whom accepted the Plea of Guilty by the Petitioner was Patrick Shawn Flynn (38465). This Plea of Guilty was Accepted in the 45th Judicial Circuit Court, that is Pike County Missouri. The Prosecutor representing the State of Missouri for this Cause was Alex Gregory Ellison (68045).

6. The Cause NO. For the Second Degree Assault - Special Victim, which occurred in Greene County Missouri is: 1731-CR07915-01. The Cause NO for the Third Degree Assault that occurred in Pike County Missouri is: 22 PJ-CR00217

7. The Respondents in this Petition are The Director of The Department of Corrections, Anne L. Precythe, 2729 Plaza Drive P.O. Box 236 Jefferson City, Missouri 65102. Tim A. Freeman, Assis-

terre Warden, Eastern Reception Diagnostic Correctional Complex, 2727 Highway k Bonne Terre Missouri 63628. The Attorney General for the State of Missouri, Eric Schmitt, 207 West High Street 65101-1516 Jefferson City Missouri 65102-0899

8. Pursuant to 28 U.S.C. § 2241, the Grounds on which the Petitioner is Challenging the Actions and Decisions are as follows, (a) How the Petitioner's Sentence is Being Carried out By Staff of the Missouri Dept of Corrections including Good time Credits, Time Served, and Parole Percentages (B) The Validity of the Petitioner's Sentence as imposed (C) Disciplinary Proceedings

GROUNDS FOR CHALLENGE

A. HOW THE PETITIONER'S SENTENCE IS BEING CARRIED OUT

9. The Petitioner is Challenging the legality of the way the Members of The Department of Corrections are Carrying out His Sentence imposed By the Pike County Courts for Third Degree Assault. Cause NO. 22PI-CR00217. The facts that Support this challenge are as follows:

a. On February 28, 2020, the Petitioner was Sentenced to (8) eight years to be served in the Missouri Department of Corrections, As this case stemmed from a Violation of Probation Case in the Federal System, (Middle District of Alabama) The

Judge for Greene County ordered that the (8) eight year Sentence Be ran concurrent with All other Sentences.

b. On July 24, 2021 the Petitioner was charged with a Conduct Violation for a 2.1 Major Assault and a 3.1 possession of dangerous contraband. Upon being read the conduct Violation report, the petitioner was read his "Miranda Rights." At this point the petitioner stated that he could not offer a Plea as he needed to speak first to legal Counsel so that he would be able to give an intelligent plea.

c. Following the initial encounter with Staff of Northeast Correctional Complex when the petitioner requested legal Counsel, A Major Violation Hearing was held with what Missouri Dept. of Cons. calls the Adjustment Board. This consists simply of a Functional Unit Manager and a Custody Officer of a Rank of Lt. or higher. The Petitioner was again read his "Miranda Rights" where he stated that he in fact understood and was still in need of legal Counsel so that he could make an intelligent Plea and Statement. Because if he was mirandized then his statements and actions could be used against him. Instead of Tabling (continuing a Proceeding is called Tabling) the proceedings as policy and S.O.P. Directs, Staff claimed that the Petitioner "Refused to Participate" and found him Guilty anyways. This occurred even though the report and all evidence described the incident as Being one of Self-Defense for the Petitioner.

d. on November, 21, 2022 The petitioner plead Guilty to Cause NO: 22PI-CR00217, Judge Patrick Flynn moved to conduct immediate sentencing where he imposed a sentence of (4) four years to be ran Concurrent with all other sentences. At this point it was agreed by both Prosecuting Attorney Ellison (68045) as well as Defense Attorney Hozeno (39497) that all time served up to that point that had been served by the petitioner would be awarded.

e. on December, 20, 2022, a new "Face Sheet" (Time Computation Sheet) was delivered to the petitioner showing that none of the time from July 24, 2021 until November, 21, 2022 was being awarded to the Petitioner. Following this, the Petitioner also was aware that a requirement of 40% of the (4) four year sentence be served before parole would be available.

f. The petitioner attempted multiple times to correspond with the records dept. via Ms. Elizabeth Moore and Ms. Randa Fryman to explain the miscalculation involving the newly added sentence under Cause NO: 22PI-CR00217. The records Dept. claims that the sentence start date and the received date are the beginning of the petitioners time calculation. However, the petitioner was never received on this charge as the petitioner had already been in custody of the Dept of Cors., this would be an incorrect calculation date for the records Dept to use.

g. Due Process for Cause NO: 22PI-CR00217 Began on July 24, 2021. As the liberty of the Petitioner was further taken away than it was prior to the charge of Cause NO: 22PI-CR00217

Then the time calculation would begin on this date and not 21 November 2022.

h. 558.031.2 RSMO supports the Petitioner's claim that time from July, 24, 2021 until November, 21, 2022 should be credited to him.

B. VALIDITY OF THE SENTENCE AS IMPOSED

10. The Petitioner is challenging Pursuant to 28 U.S.C. § 2241, the Validity of the Sentence as it is Imposed as it is Beyond the Statutory Maximum, due to being improperly calculated by parties other than the Courts who imposed the sentence. The facts that support this challenge are as follows.

a. The Statutory Maximum for Cause NO: 22PI-CR00214 is (5) Five years. Due to the Usurping of the Judges Authority by the records dept. of the Missouri Dept of Coors. and the refusal to award the time served by the petitioner prior to the sentencing, this increases the entire sentence from the imposed (4) years, to an actual sentence length of (5.5) Five and one half years.

b. As the records Dept. has no authority granted by the State of Missouri to impose or to alter sentences that are.

imposed by other Courts, this action By the records Dept. rewrites the Plea Agreement given to the Petitioner By the Courts of Pike County Missouri. This makes the agreement invalid and ultimately without legal authority as the records Dept has no power to alter sentence structure.

C. DISCIPLINARY PROCEEDINGS

11. The Petitioner is challenging the Disciplinary Proceedings that led to Cause NO: 22PI-CR00217 Being introduced. The facts that support this challenge are as follows.

a. The staff of the Missouri Dept of Corrections violated Multiple Departmental Policies and Standard Operating Procedures involving the Conduct Violations that led to Cause NO: 22PI-CR00217. There was no Crime Scene Secured, The Petitioner was charged with an assault But was never checked By medical Staff to see if he himself sustained injuries

b. The Firm and Lt. Conducting the Disciplinary Hearing involving the assault, ignored all reports and video evidence provided that suggested the Petitioner acted in Self Defense and made an unethical decision to find the petitioner Guilty in retaliation for requesting legal Counsel.

C. The Staff of Bowling Green (Northeast Correctional Complex) Did not follow policy in meeting the requirements to even charge the Petitioner with a major assault. The victim that the Petitioner was charged with assaulting did not require extensive medical care, nor did he sustain serious bodily injury as defined By Institutional Policy.

D. Without meeting these requirements the Petitioner is not indictable for a felony assault.

REQUEST FOR RELIEF

12. The Petitioner requests that the Courts see the merit in the challenges presented. The Petitioner begs the Courts to see that the Cause No: 22PI-CR00217 could have never been brought forth had the Staff of the Dept of Cors not violated Departmental Policies along with Rules of Both Civil and Criminal Procedure.

13. The Petitioner requests that the Courts dismiss and expunge this charge off of his Criminal record if it is in the realm of abilities of this Court.

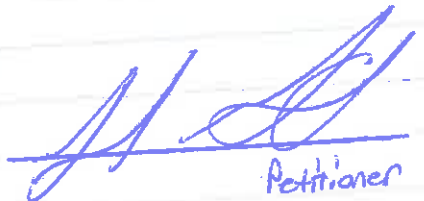
14 Barring the ability of the Courts to Dismiss the Judgement, set aside or vacate it, the Petitioner requests that the Courts order that the time

accumulated from July 24, 2021 until November 21, 2022
Be added to the time served for Cause NO: 22 PI-CR00217
which would reduce the Maximum Release Date for this
Cause from November, 20, 2026 to July, 23, 2025

DECLARATION

I declare under penalty of perjury that I am the
Petitioner, I provided this petition by the authorship of my own
hand, and that all information provided is true and correct as I
know it to be. I also understand that a false statement of a
material fact may serve as the basis for prosecution for
perjury.

Date: 2-28-2023


Petitioner
Joshua R. Gilley
ERDCC
2727 Highway K
Bonne Terre, MO 63628

Joshua Colley B50319 2-0-214
FPOCC
2027 Highway 12
Bonne Terre MO 63628

This correspondence is from an inmate in the custody of the Missouri Department of Corrections. The Department is not responsible for the content of this correspondence. For information about the Department or to verify information about the offender, please visit our website at www.doc.mo.gov.

Clerk of Court
400 E 9th St Rm 1510
Kansas City, MO 64102

SAINT LOUIS MO 630
7 MAR 2023 PM 4 L



RECEIVED

23 MAR -9 AM 11:16

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
KANSAS CITY, MO

23 MAR 2023 09:15

